

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JOHN B., CARRIE G., JOSHUA M., MEAGAN A.)
and ERICA A., by their next friend L.A.;)
DUSTIN P., by his next friend, Linda C.;)
BAYLI S. by her next friend, C.W.;)
JAMES D. by his next friend, Susan H.;)
ELSIE H. by her next friend Stacy Miller;)
JULIAN C. by his next friend, Shawn C.;)
TROY D. by his next friend, T.W.;)
RAY M. by his next friend, P.D.;)
ROSCOE W. by his next friend, K.B.;)
JACOB R. by his next friend, Kim R.;)
JUSTIN S. by his next friend, Diane P.; and)
ESTEL W. by his next friend, E.D.;)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

DAVE GOETZ, Commissioner, Tennessee)
Department of Finance and Administration;)
J.D. HICKEY, Assistant Commissioner,)
Bureau of TennCare; and VIOLA P. MILLER,)
Commissioner, Tennessee Department of)
Children's Services,)

Defendants.)

No. 3-98-0168

Judge Haynes

PLAINTIFFS' RENEWED MOTION TO COMPEL DISCOVERY

Come now the Plaintiffs and pursuant to Rule 37(a)(2), F.R.C.P., and Local Rule 37.01, respectfully renew their motion, filed October 13, 2006 ("the October 13 motion") (Doc. 708), to compel the State to make certain discovery. In accordance with Local Rule 37.01(a), the parties prepared a joint statement of the matters at issue, and a copy of that statement was attached to the October 13 motion.(Doc. 711) As required by Local Rule 37.01(b)(3), the plaintiffs also attached to the October 13 motion a statement of their counsel certifying that plaintiffs' counsel have conferred with defense counsel in a good faith effort to resolve by agreement the issues raised in that motion, and that despite these efforts, the issues raised by that motion remained in dispute.

By this motion to renew the October 13 motion, the plaintiffs must inform the Court that the State has failed to produce certain information whose discovery was compelled in the Order of November 20, 2007 (Doc. 743). As required by Local Rule 37.01(b)(3), the plaintiffs attach to this motion a statement of their counsel certifying that plaintiffs' counsel have conferred with defense counsel in a good faith effort to resolve by agreement the issues raised in this motion, and that despite these efforts, the issues raised by this motion remain in dispute.

The Plaintiffs raised some of these issues in a renewed motion to compel, filed December 20, 2006, and that after the hearing of December 20, 2006, the Court denied that motion without prejudice to renewal.(Doc. 770 and 782) By this motion, the plaintiffs again raise the issue of the State's refusal to provide responses to reasonable discovery requests.

All of the discovery materials that the Plaintiffs seek through this motion have been the subject of previous orders compelling their production, as indicated below:

1. Documents, ESI and information in the possession or control of the State's contractors.¹
2. ESI in the possession of the State's key custodians.²
3. The identities of former employees of the State and its contractors with substantial EPSDT responsibilities³
4. Certifications from key custodians whether any responsive ESI has been removed.⁴
5. Files for a sample of TennCare children who sought care from the Children's Special

¹ Bench ruling of November 6, 2006 (Doc. 734: Transcript at 72-72) and Order of November 21, 2006 (Doc. 743) at 1-2.

² Bench ruling of November 6, 2006. (Doc. 734: Transcript at 29, 68); Order of November 21, 2004 (Doc. 743) at 2.

³ Bench ruling of November 6, 2006 (Doc. 734: Transcript at 49) and Order of November 21, 2006 (Doc. 743) at 3.

⁴ Order of January 14, 2007 (Doc. 789) at 3, citing Doc. 785-2: Tigh Affidavit, Paragraph C.

Services (CSS) program.⁵

6. Answers, signed by all key custodians who participated in preparing the State's discovery responses, to the plaintiffs' requests for admissions and interrogatories seeking assurances that responsive documents and ESI had not been destroyed and had been produced.⁶

The Plaintiffs respectfully file a Brief in support of this motion in which they describe the State's violations and demonstrate the need the for further relief to compel compliance with those orders. The Plaintiffs also submit a Notice of Filing certain exhibits that document the facts supporting this motion.

Dated this 8th day of March, 2007.

Respectfully submitted,

TENNESSEE JUSTICE CENTER

/s/Michele M. Johnson.

Michele M. Johnson, Tenn. BPR # 16756
G. Gordon Bonnyman, Jr. Tenn. BPR # 2419
301 Charlotte Avenue
Nashville, TN 37201-1101
Phone: 615-255-0331
FAX: 615-255-0354

Gregory T. Heyman
Albert H. Kass
Junaid Khalil
Victoria Reznik
Shira J. Schlaff
KIRKLAND & ELLIS, LLP
Citigroup Center 153 East 53rd Street
New York, NY 10022-4611
Phone 212-446-4800

⁵ Bench ruling of November 6, 2006 (Doc. 734: Transcript at 65) and Order of November 21, 2006 (Doc. 743) at 4.

⁶ Bench ruling of November 6, 2006 (Doc. 734: Transcript at 56-64); bench ruling of December 20, 2006 (Doc. 786: Transcript at 41-42); Order of November 21, 2006 (Doc. 743) at 3. The State filed partial responses on January 30, 2007. (Doc. 799) For nine former employees, including two former TennCare Directors, and the Governor, the State has refused to ask the individuals to respond personally, as the Court directed.

Jeffrey S. Goldman
Robert T. Joseph
SONNENSCHN NATH & ROSENTHAL
7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6404
Phone 312.876.8000

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of this document has been served on the state defendants and the monitors on the 8th day of March, 2007 by the Electronic Court Filing system addressed as follows:

COUNSEL FOR THE DEFENDANTS:

Ms. Linda Ross
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-1771
linda.ross@state.tn.us

Mr. Aubrey B. Harwell, Jr.
Mr. Ronald G. Harris
Mr. Philip D. Irwin
NEAL & HARWELL, PLC
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219-2498
(615) 244-1713
aharwell@nealharwell.com
rharris@nealharwell.com
pirwin@nealharwell.com

Mr. Charles J. Cooper
Mr. Michael W. Kirk
Ms. Nicole J. Moss
Mr. Derek L. Shaffer
COOPER & KIRK, PLLC
555 11th Street N.W., Suite 750
Washington, D.C. 20004
(202) 220-9600
ccooper@cooperkirk.com
mkirk@cooperkirk.com
dshaffer@cooperkirk.com
nmoss@cooperkirk.com

COURT-APPOINTED MONITORS:

Ms. Susan Kay
susan.kay@vanderbilt.edu

Mr. Alex Hurder
alex.hurder@vanderbilt.edu

Mr. Michael Passino
passino@mpassino.com

Mr. Robert L. Smith
rlsmith@shbhlawfirm.com

Ms. Leilani Boulware
lboulware@mmc.edu

s/ Michele M. Johnson
Counsel for the Plaintiffs